IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE EIGHTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P. NO.20630 of 2003

Between:

N.V.S. Murthy, S/o. Late Surayya

Aged about 66 years, R/o.6-8-2002,

Nidamarthy Vari Street,
T. Nagar, Rajahmundry.

..... PETITIONER

AND

1. The Commissioner of Endowments,

Endowments Department, Boggulakunta,
Tilak Road, Hyderabad.

2. The Joint Commissioner (Estates)

O/o. Commissioner of Endowments,

Boggulakunta, Hyderabad.

3. The Deputy Commissioner of Endowments,

Endowments Department, Kakinada, E.G.Dist.

4. The Assistant Commissioner of Endowments,

Endowments Department, Rajahmundry.

5. The National Senior Basic School alias Desiya Vidyalaya,

Rajahmundry, Rep. by its Executive Officer/
Person-in-Management.

6. B. Jayadev, S/o. Late B. Giri Babu,
R/o.2-56-8, Sambu Nagar, Rajahmundry.

7. M/s. Vaishnavi Enterprises,

Rep. by its Managing Partner, Challa Shankar Rao,
S/o. Late Appa Rao. aged 52 years, 79-8-2,

Postal Colony, Rajahmundry.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ Order, or direction more particularly one in the nature of Writ *Certiorari* calling for the records in and relating to order, dated 04-09-2003, made in order R.D. is No. L2/55121/1994, dated 04-09-2003, of the 1st respondent and the consequential registered sale deed made by the 5th respondent in favour of
6th respondent on 10-09-2003 and the sale deed registered by the 6th respondent in favour of the 7th respondent and set aside the same.

Counsel for the Petitioners: MR. V.L.N.G.K. MURTHY

Counsel for the Respondents 1 to 4: G.P. for Endowments

Counsel for the Respondent No.5: None appeared

Counsel for the Respondent No.6: Mr. C.V. Mohan Reddy

Counsel for the Respondent No.7: Mr. B. Bhaskara Rao

The Court made the following :

THE HONOURABLE SRI JUSTICE B. SUDERSHAN REDDY

AND

THE HONOURABLE SRI JUSTICE C.V. RAMULU

W.P. No.20630 OF 2003

ORDER: Per Hon'ble Sri Justice B. Sudershan Reddy)

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and prays for issuance of a Writ of *Certiorari* calling for the records in and relating to order, dated 4-09-2003 made in R.D. No.L2/55121/1994, of the 1st respondent and quash the same. The petitioner also prays for consequential direction declaring the registered sale deed, dated 10-09-2003, executed by the 5th respondent in favour of the 6th respondent and the sale deed executed by the 6th respondent in favour of the 7th respondent on the same day, as illegal. The petitioner accordingly prays for issuing an appropriate order to set aside both the sale deeds.

The property in dispute is a large extent of land admeasuring 3,286 square yards in R.S. No.1922 situated at Rajahmundry belonging to the 5th respondent. The 5th respondent-National Senior Basic School alias Desiya Vidyalaya, Rajahmundry, is a Charitable Institution (for short 'the Institution') within the meaning of the provisions of the A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Act'). In the year 1959, the governing body of the 5th respondent-Institution leased out the said land to the petitioner under the registered lease deed, dated 21-02-1959, for a period of 35 years on a consideration of deposit of a sum of Rs.5,000/- and on a monthly rent of Rs.168-75 paise. The petitioner constructed a Cinema theatre in the said property and having run the business for some time gave the property on

sublease to the father of the

6th respondent under a registered deed, dated 30-07-1973, for a period of ten years which expired by efflux of time on

30-07-1983.

In the meanwhile, the management of the affairs of the 5th respondent-Institution was taken over by the State and an Executive Officer/Person-in-Management was appointed to manage the affairs of the Institution. It appears the

5th respondent-Institution had vast extent of properties and most of them were subjected to illegal encroachments and on account of which the Institution has not derived any benefit out of the said properties. That a High Power Committee was constituted with the District Collector as the Chairman to implement the provisions under the Act 30 of 1987 and the said Committee after an in-depth study of the affairs, recommended for sale of the properties of the 5th respondent-Institution to those persons who are holding the properties of the Institution under a valid lease. The recommendations, so made, were accepted by the Institution.

That the father of the 6th respondent obtained agreement of sale from the 5th respondent on 17-07-1991 and paid 1/3rd amount towards sale consideration. There is some controversy surrounding the very agreement of sale entered into by and between the 5th respondent and the father of the

6th respondent. The facts in this regard are required to be noticed for a limited purpose of disposal of this writ petition.

That according to the writ petitioner, the proposals from the 5th respondent for sale of the property was not received and the same were served on the father of the 6th respondent, but according to the respondents 1 & 5, the petitioner did not make any claim to purchase the property. The 5th respondent vide letter, dated 14-06-1988, gave an opportunity to the petitioner to deposit the sale consideration but the petitioner having received the same gave a contentious reply practically rejecting the offer made by the 5th respondent. We do not propose to express any opinion about the genuineness or otherwise of the letter addressed by the 5th respondent to the petitioner and also as regards the reply stated to have been issued by the petitioner, since the same is the subject matter of various proceedings pending in the Civil Courts between the parties.

The Government has issued G.O. Ms. No.922, Revenue (Endowments.IV) Department, dated 15-12-2000, revising the rates of the site. That after the 6th respondent's father entered into agreement of sale by duly depositing the 1/3rd of the sale consideration, the petitioner taking advantage of the
G.O. Ms. No.922, dated 15-12-2000, made representation, dated 01-10-2002, along with pay order for an amount of Rs.4,59,999/-, to purchase the property and the same was received subject to the result of A.S. No.28 of 2002 and further subject to approval of the same by the 1st respondent.

Be it noted, the petitioner filed O.S. No.302 of 1993 in the Court of the IV Additional Junior Civil Judge, Rajahmundry, seeking a declaration in the following manner:

> "……that the plaintiff herein alone is eligible to purchase the suit schedule site as per the decision of the 5th defendant in the suit i.e., on the basis of recommendation of the High Power Committee appointed by the State of Andhra Pradesh in 1998 and for a consequential mandatory injunction to defendants 1 to 3 & 5 in the suit to deal with the plaintiff only regarding the suit schedule site or in the alternative for a mandatory injunction directing the 1st defendant in the suit to do all such acts, deeds and things that are necessary for extension of the lease covered by the lease deed dated 21-02-1959 and consequentially put the plaintiff in possession of the vacant site and for costs of the suit."

The State of Andhra Pradesh, the Commissioner of Endowments as well as the Charitable Institution were impleaded as party defendants to the suit. It is also required to note that the petitioner filed O.S. No.123 of 1987 on the file of the learned Subordinate Judge Court, Rajahmundry, seeking eviction of the father of the 6th respondent on the ground that the sub-lessee failed to vacate the property even after expiry of the lease period. The trial Court dismissed the said suit vide its judgment and decree, dated 21-05-1993, against which the petitioner preferred A.S.No.1730 of 1993 and the same was allowed by this Court by its judgment and decree, dated 13-12-1999, against which the 6th respondent herein preferred L.P.A. No.132 of 2000 and the same is still pending. In the meanwhile, the petitioner got filed E.P. No.126 of 2000 and obtained delivery of possession of the property on
15-07-2000.

O.S. No.302 of 1993 filed by the petitioner was dismissed by the trial Court vide its judgment and decree, dated
31-12-2001, against which the petitioner preferred A.S. No.28 of 2002 which is

now pending on the file of the learned

IV Additional District Judge Court (Fast Track Court), Rajahmundry. It is just and necessary to note that the petitioner had the advantage of temporary injunction in his favour restraining the respondents herein from alienating the property in question which stood dissolved on the dismissal of the suit. The petitioner sought for an injunction pending the appeal preferred by him but the appellate Court refused to grant any such injunction. There was no order of prohibiting the respondents from alienating the schedule property in favour of the 6th respondent.

The 1st respondent herein, having considered the report/recommendations of the Deputy Commissioner of Endowments, Endowments Department, Kakinada, accepted the proposal for sale of the site in favour of the 6th respondent subject to certain conditions and accordingly issued the impugned proceedings, dated 04-09-2003. The 1st respondent took the view under the impugned proceedings that the

6th respondent alone is eligible and entitled to purchase the property. The 5th respondent, immediately on receipt of the impugned proceedings, executed a sale deed and got the same registered in favour of the 6th respondent on 10-09-2003. On the same day, the 6th respondent sold away the said property to the 7th respondent.

Sri V.L.N.G.K. Murthy, learned counsel for the petitioners, submitted that the alienation of the property in question by the 5th respondent, in substance

and reality, is in favour of the 7th respondent, which is totally illegal and unauthorised. The alienation is not only contrary to the provisions of the Act and the Rules framed thereunder but also against the recommendations of the High Power Committee. The 6th respondent is a mere conduit and facilitated alienation of the property in favour of the 7th respondent, who in law is not entitled for the benefit of the policy decision taken to alienate the properties of the 5th respondent in favour of those who were found to be in lawful possession of the properties, as on the date when the such policy decision was taken. It was also submitted that the transaction of sale is somewhat peculiar and unprecedented, since the sale deed in favour of the 6th respondent is not supported by valid consideration as well as the delivery of possession.

The learned Government Pleader and Sri C.V. Mohan Reddy, learned counsel appearing for the 6th respondent, *inter alia,* submitted that the writ petition filed by the petitioner is totally misconceived and not maintainable in law. The contention was that the petitioner cannot be allowed to pursue parallel remedies in the Civil Court as well as in this Court
by invoking the public law remedies. The prayer in
O.S. No.302 of 1993 which is the subject matter of appeal
in A.S. No.28 of 2002 on the file of the IV Additional District Judge Court (Fast Track Court), Rajahmundry, and the
prayer made in this writ petition is one and the same. The petitioner, as well, could have impleaded the subsequent purchaser viz., the 7th respondent herein in A.S.No.28 of 2002 and sought for an appropriate relief. The writ petition, in the circumstances, according to the learned counsel for the respondents, is not maintainable in law.

In Our considered opinion, the submission made by Sri C.V. Mohan Reddy, learned counsel for the 6th respondent, about the maintainability of the writ petition merits its acceptance. The very facts narrated in the affidavit filed in support of the writ petition disclose the nature of controversy surrounding the transfer of immovable property, finally, in favour of the 7th respondent herein involving variety of questions and facts of law, which can be effectively adjudicated only in a properly constituted common law proceedings. The petitioner, in sum and substance, is challenging the execution of the sale deed and its registration by the 6th respondent in favour of the 7th respondent, though the alienation by the 5th respondent-Institution in favour of the 6th respondent is also challenged. That ultimately, if the plea of the petitioner is to be accepted, the sale deed executed by the 6th respondent in favour of the 7th respondent is to be set aside. In substance, this Court may have to go into the validity of the sale deed executed by the 6th respondent in favour of the 7th respondent. In our considered opinion, transaction entered between two private individuals cannot be gone into in a public law remedy by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. That many disputed questions of facts are required to be resolved even for the purposes of deciding as to the validity of the sale deed executed by the 5th respondent-Institution in favour of the 6th respondent for which purposes the public law remedy is totally ill-suited. That apart, the petitioner had already availed the common law remedy seeking declaration that the property cannot be alienated in favour of any third parties and the same has to be alienated only in his favour which is the subject matter for consideration in A.S. No.28 of 2002

on the file of the learned IV Additional District Judge Court (Fast Track Court), Rajahmundry. More or less, the same relief is sought for in this writ petition under the guise of challenging the impugned proceedings, dated 04-09-2003, on the file of the

1st respondent/Commissioner of Endowments, Endowments Department, Hyderabad. The Civil Court can, as well, go into the validity of the impugned proceedings also, since it is already ceased with the substantial dispute between the parties which includes the question as to whether the property in question is required to be alienated only in favour of the petitioner; obviously, if the petitioner succeeds and get the relief as prayed for by him, the entire transaction in favour of the respondents 6 & 7 has to be declared nonest.

On consideration of all the relevant facts and circumstances, we hold that the writ petition is misconceived. The petitioner cannot be allowed to choose and avail parallel remedies and the writ petition deserves dismissal on that ground alone.

We make it clear that we have not expressed any opinion with regard to any of the contentions raised in the writ petition and argued before us and we accordingly grant leave and liberty to the petitioner to raise all the issues raised in this writ petition and the contentions urged, in a properly constituted proceedings, which shall have to be examined on their own merits uninfluenced by dismissal of this writ petition. It shall be open to the petitioner to file appropriate application/applications in A.S. No.28 of 2002 and seek appropriate relief, in accordance with law. It shall also be open to the petitioner to file a separate suit, if he is so advised and in either of the events, the matter shall be considered on its own merits uninfluenced by any of the observations made in

this writ petition.

The Writ Petition fails and the same shall accordingly stand dismissed without any order as to costs.

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B. SUDERSHAN REDDY, J

Date: , January, 2005.

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C.V. RAMULU, J

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To

1. One Fair copy to the Hon'ble Sri Justice B. Sudershan Reddy.

2. One Fair copy to the Hon'ble Sri Justice C.V. Ramulu.

3. The Commissioner of Endowments,

Endowments Department, Boggulakunta,
Tilak Road, Hyderabad.

4. The Joint Commissioner (Estates)

O/o. Commissioner of Endowments,

Boggulakunta, Hyderabad.

5. The Deputy Commissioner of Endowments,

Endowments Department, Kakinada, E.G. Dist.

6. The Assistant Commissioner of Endowments,

Endowments Department, Rajahmundry.

7. The Executive Officer/Person-in-Management,
The National Senior Basic School alias Desiya Vidyalaya,
Rajahmundry.

8. Two C.Cs. to G.P. for Endowments, High Court of A.P.,
Hyderabad (O.U.T.).

9. Two C.D. copies.